

1 DIVISION OF LABOR STANDARDS ENFORCEMENT

2 Department of Industrial Relations
3 State of California

4 BY: BARTON L. JACKA, SBN 154116
5 2031 Howe Avenue, Suite 100
6 Sacramento, CA 95825
7 Telephone: (916) 263-2918
8 Fax: (916) 263-2920
9 E-mail: bjacka@dir.ca.gov

10 Attorney for the Labor Commissioner

11 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**
12 **DEPARTMENT OF INDUSTRIAL RELATIONS**
13 **STATE OF CALIFORNIA**

14 Case No.: TAC 24039

15 EDRICKCAN LaQUAN LOOX,
16
17 Petitioner,

**DETERMINATION OF
CONTROVERSY (LABOR CODE §
1700.44(a))**

18 v.

19 RODNEY CHESTER dba TRIO TALENT
20 AGENCY,
21
22 Respondent,

1 **DETERMINATION**

2 **I.**

3 **INTRODUCTION**

4 Edrickcan LaQuan Loox' August 1, 2011 petition (the "Petition") against Rodney
5 Chester dba Trio Talent Agency ("TTA")¹ (Ms. Loox and TTA collectively the "Parties") to
6 determine controversy pursuant to Section 1700.44 of the Labor Code was heard on March 23,
7 2012 in the Los Angeles office of the Labor Commissioner (the "Labor Commissioner"),
8 Division of Labor Standards Enforcement, Department of Industrial Relations, State of
9 California. Barton L. Jacka, an attorney for the Labor Commissioner from the Sacramento
10 office, heard the matter on assignment by the Labor Commissioner.

11 Both Parties appeared. Jeffrey Loox, Ms. Loox' husband, also was present. Neither
12 Party was represented by counsel.

13 **II.**

14 **FACTS**

15 **A. Allegations of the Petition.**

16 The Petition alleges in pertinent part that Ms. Loox is an "artist" as defined in Section
17 1700.4(b) of the Labor Code and that TTA was acting as a "talent agency" as defined in
18 Section 1700.4(a). On or about March 16, 2009 the parties entered into a contract (which was
19 not provided at the hearing).

20 The Petition identifies the controversy as follows: In May 2009, through TTA, Ms.
21 Loox was booked for an infomercial. From approximately May 2010 to February 2011, TTA
22 did not notify Ms. Loox of residual pay it had received in connection with the information and
23 did not forward to her the sums owed to her on that pay.

24 Ms. Loox terminated TTA's representation in July 2010 – after some payments had,
25 without her knowledge, already been withheld by TTA. When in July 2011 Ms. Loox asked
26

27
28 ¹ Most of the exhibits in this matter refer to "Trio Talent Agency" as the talent agency in question; Mr. Chester,
however, during the period pertinent to this dispute, held the talent agency license.

1 TTA about the missing payments, TTA informed her that when she terminated TTA's
2 representation, per TTA's usual practice, her "paperwork" had been shredded.

3 Ms. Loox seeks the sums wrongfully withheld, interest on those sums, a "late fee
4 penalty", revocation of Mr. Chester's license and the provision of a letter to the Employment
5 Development Department ("EDD") of the State of California explaining (apparently in
6 connection with issues EDD had raised about income that Ms. Loox had allegedly not reported
7 in connection with her claim for unemployment benefits) that she had not reported income
8 from the infomercial because she was not aware she had received it.

9 **B. Factual conclusions based on the testimony and evidence adduced at the hearing.**

10 1. The Parties entered into an agreement² in about March 2009 for TTA to serve as
11 Ms. Loox' talent agent in return for a 10% commission on commercial-related work.

12 2. According to the agreement, the person for whom Ms. Loox provided such
13 services would send checks to TTA, which would deposit the checks in a trust account, send
14 Ms. Loox her 90% share and retain its 10% share.

15 3. In May 2009, Ms. Loox was hired to perform as a model in an infomercial for
16 Murad, a skin care company; TTA had acted as her agent in connection with the infomercial.

17 4. Ms. Loox received three checks from TTA in connection with payments from
18 Murad: these checks totaled \$2,101.88 – a sum which reflects the gross payment by Team
19 Music (Murad's agent for purposes of payment), minus: (a) tax withholding (by Team Music)
20 and (b) TTA's 10% commission (withheld by TTA).

21 5. On July 13, 2010, Ms. Loox ended her business engagement with TTA.

22 6. TTA thereafter shredded Ms. Loox' file, with the exception of her address, so
23 that it could send additional residual sums to her.

24
25
26
27 ²No copy of this agreement was produced but the Parties concurred in the testimony about its material terms; Ms.
28 Loox testified that a "standard" 10% "penalty" applies for late payments by a talent agent; Mr. Chester testified to
the contrary but there was no testimony that the agreement contained such a provision.

1 heard de novo. To stay any award of money, the party aggrieved shall execute a bond
2 approved by the superior court in a sum not exceeding twice the amount of the judgment. In all
3 other cases the bond shall be in a sum of not less than one thousand dollars (\$1,000) and
4 approved by the superior court.”

5 Pursuant to Section 1700.25:

6 (a) A licensee who receives any payment of funds on behalf of an artist shall
7 immediately deposit that amount in a trust fund account maintained by him or her in a
8 bank or other recognized depository. The funds, less the licensee’s commission, shall
9 be disbursed to the artist within 30 days after receipt. However, notwithstanding the
10 preceding sentence, the licensee may retain the funds beyond 30 days of receipt in
11 either of the following circumstances: ...

12 (2) When the funds are the subject of a controversy pending before the
13 Labor Commissioner concerning a fee alleged to be owed by the artist to the licensee.

14 ...
15 (b) A separate record shall be maintained of all funds received on behalf of an
16 artist and the record shall further indicate the disposition of the funds.

17 (c) If disputed by the artist and the dispute is referred to the Labor
18 Commissioner, the failure of a licensee to disburse funds to an artist within 30 days of
19 receipt shall constitute a "controversy" within the meaning of Section 1700.44.

20 (d) Any funds specified in subdivision (a) that are the subject of a controversy
21 pending before the Labor Commissioner under Section 1700.44 shall be retained in the
22 trust fund account specified in subdivision (a) and shall not be used by the licensee for
23 any purpose until the controversy is determined by the Labor Commissioner or settled
24 by the parties.

25 (e) If the Labor Commissioner finds, in proceedings under Section 1700.44, that
26 the licensee's failure to disburse funds to an artist within the time required by
27 subdivision (a) was a willful violation, the Labor Commissioner may, in addition to
28 other relief under Section 1700.44, order the following:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(2) Award interest to the prevailing artist on the funds wrongfully withheld at the rate of 10 percent per annum during the period of the violation.

There is no dispute that within 30 days of receipt of each of the eight checks in dispute, TTA should have sent to Ms. Loox her 90% share of those checks.

The eight checks totaled \$4,506.94; Ms. Loox' share was \$4,056.25.

It is not proven that TTA owes a 10% penalty

Even crediting TTA's testimony that accounting mistakes led it to not pay Ms. Loox sums it owed her after it sent her the three checks that she did receive, it is clear that from July 1, 2011, TTA's failure to pay Ms. Loox this \$4,056.25 was "willful": TTA has provided no explanation for its nonpayment other than it not having the money and it appears to have violated Labor Code Section 1700.25 by failing to keep the funds in a separate account.

Accordingly, TTA owes Ms. Loox a total of \$463.42 in interest.

There is no legal authority to grant Ms. Loox the other remedies she seeks.

IV.

ORDER

The relief sought in the Petition is granted as follows:

Mr. Chester shall pay Ms. Loox: \$4,056.25 for failure to pay her sums owed to her under her agreement with TTA; and \$463.42 in interest; for a total of: \$4,519.67.

Dated: August 21, 2012

DIVISION OF LABOR STANDARDS ENFORCEMENT,
Department of Industrial Relations, State of California

By: Barton L. Jacka
BARTON L. JACKA
Attorney for the Labor Commissioner